



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 11, 1997

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Transportation  
DeWitt C. Greer State Highway Bldg.  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR97-2722

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111393.

The Texas Department of Transportation (the "department") received the following request dated September 3, 1997:

I request the following government records in connection with the improvements to State Highway 199 in Tarrant County, Texas: all current TxDOT right of way maps beginning with the easternmost terminus of the SH 199 project through, up to, and including improvements terminating on the eastern shore of Lake Worth.

In response to this request, the department sent the requestor right of way maps which date from 1929.

The department then received a second request dated September 12, 1997, in which the requestor sought the following:

I am requesting . . . the *new* right of way maps showing the *proposed improvements* to State Highway 199. I would like to see the new right of way

maps showing the land proposed to be taken from adjoining landowners in connection with the proposed widening of Highway 199. Again, I am looking for such right of way maps beginning with the easternmost terminus of the SH 199 project through, up to, and including improvements terminating on the eastern shore of Lake Worth. You sent me previously right of way maps from 1929.

In response to the second request, the department informed the requestor that the new right of way maps would not be available to the public until after the formal public meeting regarding the proposed improvements is held.

By letter dated October 2, 1997, the requestor inquired as to whether the department had requested an open records decision as to whether the right of way map detailing proposed improvements is excepted from required public disclosure. On October 9, 1997, you asked this office to determine whether the "draft map" of the proposed improvements to State Highway 199 is excepted from disclosure under section 552.105 of the Government Code.

You state that the department did not understand until it received the October 2 letter from the requestor that the requestor wanted a copy of the "draft map." We note, however, that in the September 12 letter the requestor explicitly asks for "the *new* right of way maps showing the *proposed improvements* to State Highway 199." The October 2 letter does not contain any additional description of the map that the requestor is seeking.

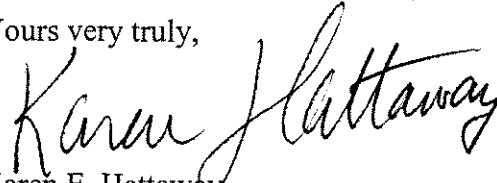
We conclude that the ten business day period during which the department was required to request an open records decision began to run with the September 12 request. Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

The ten business day time period began to run with the September 12 request. However, the department did not request a decision from this office until October 9. Therefore, unless the draft map is confidential by law or other compelling reasons exist as to why it should not be made public, you must release the draft map to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented

to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is fluid and cursive, with the first name "Karen" and last name "Hattaway" clearly distinguishable.

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 111393

Enclosures: Submitted documents

cc: Mr. Daniel M. Anderson  
Barron, Adler & Anderson, L.L.P.  
808 Nueces Street  
Austin, Texas 78701-2216  
(w/o enclosures)